

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Federal Communications Commission  
Office of the Secretary

In the Matter of  
Billed Party Preference  
for 0+ InterLATA Calls

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CC Docket No. 92-77

REPLY COMMENTS OF THE COLORADO OFFICE OF CONSUMER COUNSEL  
CONCERNING PROPRIETARY CALLING CARDS

The Colorado Office of Consumer Counsel ("Colorado OCC"), pursuant to the Federal Communications Commission's Notice of Proposed Rulemaking, hereby submits its Reply Comments in the above-captioned proceeding.

Introduction

As part of its consideration of "billed party preference" (BPP), the Commission seeks comments on a proposed interim measure affecting proprietary calling cards. The Colorado OCC appreciates the opportunity to submit reply comments on a proposal that the Commission require interexchange carriers (IXCs) to share with other IXCs billing and validation data for any calling card used on 0+ interLATA calls. Equivalently, the proposal requires the IXC issuer of a proprietary calling card to choose between blocking 0+ calls made on its network with a proprietary calling card or sharing its validation database with other IXCs, rendering the calling card no longer proprietary. This proposal is sometimes referred to as the "0+ public domain" proposal.

The Colorado OCC opposes the 0+ public domain proposal. We believe the proposal is ill-advised for a number of reasons: first, it is at odds with the consumer interest

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and will exacerbate the considerable confusion that already exists within the calling public. Second, the 0+ public domain proposal will not assist development of true competition in the operator service providers (OSP) market. Third, the 0+ proposal is inconsistent with and will retard the eventual implementation of BPP.

We are in the unusual position of agreeing with AT&T, U S West and numerous other major carriers in opposing this proposal. Our comments are in reply to theirs.

#### **0+ Public Domain Does Not Serve the Consumer Interest**

The Colorado OCC believes that telephone consumers desire stability in prices and practices for using public telephones. They are still reeling from the serial effects of divestiture, multiple IXCs, COCOTs, AOS providers, blocking, splashing, payphone presubscription and code dialing. The Commission should not entertain yet another shock to the system now.

The 0+ public domain proposal is probably unfair to the carriers who have developed proprietary calling cards; it is certainly unfair to the tens of millions of consumers who have struggled to make sense out of a system which allowed an unknown carrier to bill on another carrier's calling card at exorbitant rates. Some consumers have learned to fend for themselves in the OSP market, due in part to the existence of proprietary calling cards. It would be a serious mistake to change the rules again, especially when the Commission is considering a permanent structural solution, BPP, which recognizes and implements customer sovereignty in the choice of a 0+ provider.

We make a reasonable assumption about the behavior of the consumer of public telephone service: the consumer who obtains and uses the calling card of a given interexchange carrier (proprietary or not), expects to be served by that carrier and billed at that carrier's rates. A conflict arises when the consumer uses one carrier's card at another carrier's presubscribed phone. We think the preference is generally established by the card, not the choice of presubscribed phone, something usually outside the caller's control. Indeed, this is exactly the logic underlying support for billed party preference.

Others torture logic to assume that a consumer obtains a calling card simply to pay interexchange tolls, and desires to select among competing OSP providers by dialing access codes or walking to another phone. Some few consumers may behave in this way, but it is ludicrous to base a policy on the assumption that customers attach so little to their choice of a carrier's calling card. We disagree with several of the OSP commentators who cite consumer benefits from the abolishment of proprietary calling cards.

The 0+ public domain proposal ignores the clear intentions of consumers who have obtained proprietary calling cards. Some commentators imply that proprietary cards restrict customer choice. We assert the opposite: customers have chosen; it is now up to the carriers and the regulators to respect and implement that choice. The operational implications of the 0+ public domain proposal (blocking 0+ calls, requiring dialing code access or sharing validation data among OSPs) are all manifestly anti-consumer.

## **0+ Public Domain Will Not Serve the Development of True Competition**

The Colorado OCC has long speculated that the outcome of true competition in the OSP industry favors the established 1+ carriers and the strongest alternative operator service providers. We cautioned the Commission in 1990 not to establish policies which merely delayed the demise of non-competitive OSPs.<sup>1</sup> In our view, many of the smaller OSPs are creatures of market failure and regulatory inaction, not valid competitors. Similarly now, the Commission errs if it fashions a regulatory fix to artificially resuscitate carriers who cannot survive in a competitive environment.

We disagree with BellSouth and the majority of the smaller OSPs who assert that the elimination of proprietary calling cards will increase competition in the OSP industry.<sup>2</sup> Such an action may keep more players in the OSP market, but only at the expense of consumers who will be charged exorbitant rates to fuel exorbitant and uneconomic commissions. If AT&T and other IXC's with proprietary calling cards are forced to share validation data, we predict the re-establishment of the AOS abuses which have tarnished the Commission's policies in the past.<sup>3</sup>

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<sup>1</sup>See CC Docket No. 90-313, Comments of Colorado OCC at 14.

<sup>2</sup>BellSouth Comments at 5.

<sup>3</sup>Indeed, we note that AT&T asserts that its decision to issue a proprietary card was motivated in large part by the abusive practices of some AOS companies who benefitted from the previous "public" version of its calling card. AT&T Comments at 4.

## **0+ Public Domain Is Inconsistent With Implementation Of BPP**

The Colorado OCC endorsed the principle of billed party preference in our comments in CC Docket No. 90-313, assuming the implementation costs were reasonable.<sup>4</sup> We are pleased that the Commission has tentatively concluded in its notice in this docket that a nation-wide BPP system will serve the public interest. The underlying principles of customer choice and sovereignty, together with competitive pressures, may lead to the Commission's goal of a competitive OSP market.

While investigating BPP, the Commission should structure its policies to be consistent with the eventual implementation of BPP. We are concerned that the 0+ public domain interim proposal will take the Commission off its course and delay the benefits of a structure like BPP where consumers have true choice in their selection of 0+ carriers.

We agree with the several commentors that the 0+ public domain proposal will affect the implementation of BPP. U S West notes correctly that the 0+ public domain proposal will retard or interfere with the implementation of BPP.<sup>5</sup> It would be ironic and a clear backward step to force customers off 0+ dialing and to code dialing, only to reverse field a few years later to re-introduce 0+ dialing in the context of billed party preference.<sup>6</sup>

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<sup>4</sup>See CC Docket 90-313 Colorado OCC Reply Comments at 1.

<sup>5</sup>U S West Comments at 5.

<sup>6</sup>Ibid. at 6.

We are not able to judge the costs of implementing the 0+ public domain proposal at this time. However, we join GTE and AT&T in their concern that valuable resources which could be dedicated to implementing BPP will instead be used to jury-rig the current structure to implement the 0+ public domain proposal. AT&T notes further that the resources dedicated to such an ill-advised course would be stranded if BPP is implemented.<sup>7</sup> In a related issue, we agree with several commentators that implementation of the 0+ public domain proposal (blocking 0+ calls) may likely not be accomplished before BPP implementation begins.<sup>8</sup>

Finally, some OSP supporters of the 0+ public domain proposal argue that it will render BPP unnecessary. This argument concerns the Colorado OCC greatly. These OSPs hold out the 0+ public domain proposal as the final answer to OSP competition, not merely an interim step on the way to BPP. As we stated in 1990, conceptually, BPP is the correct model for competition for operator service providers, not the interim model in current use. We agree with the several commentators who urge the Commission to proceed expeditiously with its investigation of billed party preference.<sup>9</sup>

### Conclusion

The Colorado OCC sees no merit in the proposal to restrict the use of proprietary calling cards or to require that these cards be shared by interexchange carriers. In fact, the

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<sup>7</sup>AT&T Comments at 9.

<sup>8</sup>See e.g., Southwestern Bell Comments at 5.

<sup>9</sup>See e.g., NYNEX Comments at 4.

"0+ public domain" proposal will harm consumers' interest, lead to additional confusion within the calling public, increase consumer consternation with the state of the public telephone market and delay a superior outcome--the establishment of billed party preference. The Colorado Office of Consumer Counsel respectfully suggests that the Commission reject the 0+ public domain proposal.

Dated this 17th day of June 1992.

Respectfully submitted,

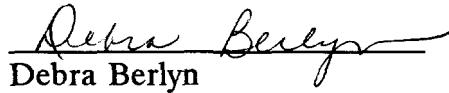
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Certificate of Service

I, Debra Berlyn, do hereby certify on this 17th day of June 1992, that I have caused a copy of the foregoing REPLY COMMENTS OF THE COLORADO OFFICE OF CONSUMER COUNSEL CONCERNING PROPRIETARY CALLING CARDS to be hand delivered to the persons named on the attached service list.

  
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